THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.2962, 2963, 2959, 2968, 2982

and 2975 of 2003

Dated:21.03.2006

WRIT PETITION No.2962 of 2003

Between:

C.Sudhan Reddy, S/o.Ch.Lachi Reddy.

..... PETITIONER

AND

South Central Railway, Sanchalan Bhavan, Secunderabad, and another.

.....RESPONDENTS

WRIT PETITION No.2963 of 2003

Between:

D.Mallesha, S/o.D.Peromal.

..... PETITIONER

AND

South Central Railway, Sanchalan Bhavan, Secunderabad, and another.

.....RESPONDENTS

WRIT PETITION No.2959 of 2003

Between:

P.Swaroopa Rani, W/o.P.Ravi Yadav.

..... PETITIONER

AND

South Central Railway, Sanchalan Bhavan, Secunderabad, and another.

.....RESPONDENTS

WRIT PETITION No.2968 of 2003

Between:

J.Narsing Rao, S/o.J.Mallaiah.

..... PETITIONER

AND

South Central Railway, Sanchalan Bhavan, Secunderabad, and another.

.....RESPONDENTS

WRIT PETITION No.2982 of 2003

Between:

Komaraiah, S/o.Venkatararsimhulu.

..... PETITIONER

AND

South Central Railway, Sanchalan Bhavan, Secunderabad, and another.

.....RESPONDENTS

WRIT PETITION No.2975 of 2003

Between:

Meera Reddy, S/o.P.Pol Reddy.

..... PETITIONER

AND

South Central Railway, Sanchalan Bhavan, Secunderabad, and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.2962, 2963, 2959, 2968, 2982

and 2975 of 2003

COMMON ORDER:

The background of all these cases is similar. The order of the learned District Judge impugned in the writ petitions is a common order and the grounds urged are common. Therefore, it is expedient to dispose of all the matters by this common order.

Taking W.P.No.2962 of 2003 filed by one C.Sudhan Reddy, the brief fact of the matter may be noticed. The petitioner is the owner of the premises bearing No.24-47 (old No.24-6/A/40) in plot No.28. The said plot is comprised in Survey Nos.5, 6, 8/1, 9/1, 11/1, 913/1 admeasuring 150 square yards situated at Rajiv Gandhi Nagar, Malkajgiri Municipality. The petitioner allegedly purchased the said property under a registered sale deed, dated 06.08.1996, from one Madhusudhan Reddy. The second respondent issued a notice, dated 05.06.2001, under Section 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Central Act No.40 of 1971; hereinafter called 'the Act' for brevity), calling upon the petitioner to show cause as to why he should not be evicted from unauthorized occupation of Railway Land admeasuring 10.42 X 8.31 mts (86.5902 square metres) situated at Dayanand Nagar, Moulali chord line. The petitioner submitted explanation on 21.07.2001 stating that the premises owned by him does not fall within the purview of the Act, since it is a patta land, and that the house was constructed after obtaining necessary permission from the Malkajgiri Municipality, for which electricity and tap connection was obtained. The petitioner also alleges that there is a municipal road between Railway track and the petitioner's Colony and that Railways cannot claim any land beyond the municipal road. After considering the explanation, the second respondent passed orders on 19.12.2001 under Section 5(1) of the Act, directing the petitioner to evict the premises within 30 days. Aggrieved by the same, the petitioner preferred an appeal under Section 9 of the Act, being C.M.A.No.10 of 2002 on the file of the Court of the Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad. By common order, dated 02.12.2002, the appeal was dismissed. In all other five writ petitions the date of show cause notice, the date of explanation and the date of eviction order passed by the second respondent are the same and the contention is also the same. Indeed, all the houses are situated in the same Colony and all the petitioners claim that they have purchased the land from B.Madhusudhan Reddy. The orders of the second respondent passed under Section 5 of the Act having been confirmed by the appellate authority, merged in the order of the

appellate authority, assailed in the writ petitions.

The Senior Divisional Engineer, Co-ordination, Hyderabad Division, South Central Railway, Secunderabad, the first respondent herein, filed counter affidavits in all the writ petitions. A reference to the counter affidavit in W.P.No.2962 of 2003 would reveal the following case of the first respondent. In connection with shifting of meter guage goods and transhipment yard from Secunderabad to Moulali and for laying of Malkajgiri-Moulali Chord Line, Central Railway acquired land at Malkajgiri Village from various pattadars in different survey numbers during the year 1962-1963. The Special Deputy Collector, Land Acquisition, Hyderabad, passed Award on 04.07.1967. An extent of Acs.15.01 guntas in Survey Nos.885/1, 914, 915, 919, 920, 10 and 11 belonging to B.Ranga Reddy and an extent of Acs.04.38 guntas of land in Survey Nos.913, 921, 8, 2, 916, 496 and 9 belonging to B.Madhusudhan Reddy, were acquired and handed over to Railways on 26.12.1963. The petitioner encroached the Railway Land to an extent of 86.58 square metres in Survey No.9. As directed by the District Collector, Ranga Reddy District, a joint survey was conducted by the Mandal Revenue Officer, Malkajgiri, along with various Officials. The encroachment as projected by the Railways was checked and confirmed, and after careful examination, the second respondent issued notice under Section 4 of the Act. Even before that a notice was got published in the Deccan Chronicle, Andhra Patrika and Siasat Daily Newspapers, dated 09.08.1988, cautioning the public against purchase of Railway Land in Survey Nos.8, 9, 10, 11, 913, 914 and 916, and that they would be responsible for the costs and consequences. In spite of the same, the petitioners encroached upon the land.

It is further stated in the counter affidavit that the petitioners raised construction illegally, without any right over the land, and therefore, liable to be evicted under the provisions of the Act. The ownership and title of the petitioner is denied asserting that the land encroached by the petitioner is not situated in Survey No.5, 6, 8/1, 9/1, 11/1 and 913/1, but it is comprised in Survey No.9. It is also stated that the land recovered by the Railways was also mutated in the revenue records showing that the land belongs to Railways.

The learned Counsel for the petitioners made following submissions. The second respondent has not considered the various objections raised by the petitioners and the eviction order passed without considering the objections raised by the petitioners, is unsustainable. He would urge that the land was purchased by the petitioners from B.Madhusudhan Reddy for a valuable consideration, after verifying that the same was not acquired by the Railways in the year 1962-1963. Secondly, he would urge that when the land does not form part of the land acquired by the Railways, the petitioners cannot be treated as unauthorized occupants under the provisions of the Act, and the Act has no application. The order passed by the second respondent without assigning any reasons is unsustainable. He nextly contends that the petitioners have urged before the appellate authority that the land in their possession was not acquired by the Railways and the learned Judge committed an error in not recording any finding thereon while dismissing the appeals. He would contend that the order of the appellate authority is erroneous. **Per contra,** the learned Standing Counsel for Railways placed strong reliance on the

notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act, 1894 (L.A.Act, for brevity), in 1962-1963, and submits that the land in occupation of the petitioners was acquired and compensation was paid to the owners, namely B.Ranga Reddy and B.Madhusudhan Reddy. He submits that the landowners, whose lands were acquired, had no title to sell the property to the petitioners and even if the construction is made on such property, the nature of possession is to be treated as unauthorized occupation.

There cannot be any denial that under the provisions of the Act, the enquiry into the question whether a person is in unauthorized occupation of a public premises or not is of summary nature. The Estate Officer, who is authorized to evict the unauthorized occupants, is required to consider the matter from two angles. First, whether the premises in question is public premises or not? Secondly, if the land or premises is a public premises, the Estate Officer has to consider the question whether the person's occupation is unauthorized or not with reference to Section 2(g) of the Act. In this case, after perusing the notification under Section 4(1) of the Act issued by the Government of Andhra Pradesh in Andhra Pradesh Gazette, dated 12.09.1963 (G.O.Ms.No.1348, dated 22.08.1963) and the declaration vide Memo No.4280-B2/63, Public Works, dated 16.10.1963, issued by the Government of Andhra Pradesh, the statement showing the compensation awarded by the Special Deputy Collector, Land Acquisition, Hyderabad, in Form A, would clinchingly show that the land in Survey Nos.8, 9, 11 and various other Survey numbers belonging to B.Ranga Reddy and B.Madhusudhan Reddy was acquired by the Government. In fact, the petitioners did not deny this. What they would contend is that the land which the petitioners purchased from Madhusudhan Reddy does not form part of the land acquired by the Railways in 1962-1963. Repelling this contention, the respondents have annexed the statement showing the details of the land acquired by the Railways together with the details of encroachments in Dayanand Nagar, Moulali Chord Line, which is as under.

STATEMENT SHOWING THE DETAILS OF THE LAND ACQUIRED BY THE RAILWAYS AND THE DETAILS OF ENCROACHMENTS BY THE PETITIONERS

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SL.No.	Name of the petitioner	Writ Petition	Survey number and the land acquired with the name of the owner	Land acquired details as per Form 13	As per Pahani	CMA No. as filed in the Court of District Judge

38	Sri Sudhan Reddy	W.P.No.2962 of 2003	From B.Madhusudhan Reddy. S.Nos.913, 921, 8, 2, 916, 496 & 9. Extent: Acs.04.30 gts.	Acs.15.01 gts	Acs.15.01 gts	10/02
26	Sri Mallesham	W.P.No.2963 of 2003	From B.Madhusudhan Reddy.S.Nos.885/1, 914, 915, 919, 920, 10 & 11….Acs.15.01 gts	Acs.15.01 gts	Acs.15.01 gts	9/02
30	Smt.Swaroopa Rani	W.P.No.2959 of 2003	From B.Ranga Reddy. S.Nos.885/1, 914, 915, 919, 920, 10 & 11….Acs.15.01 gts.	Acs.15.01 gts	Acs.15.01 gts	12/02
20	Sri J.NarsingaRao	W.P.No.2968 of 2003	-do-	-do-	-do-	13/02
23	Sri Komaraiah	W.P.No.2982 of 2003	-do-	-do-	-do-	14/02
46	Sri Meera Reddi	W.P.No.2975 of 2003	From B.Madhusudhan Reddy. S.Nos.913, 921, 8, 2, 916, 496 & 9. Extent: Acs.04.30 gts	Acs.15.01 gts	Acs.15.01 gts	11/02

No attempt is made by the petitioners to dispute the above statement. Be that as it is, the notification issued under Section 4(1) and declaration made under Section 6 of the L.A., Act and the fact that Award is passed, lead to a presumption that the land in various survey numbers which the petitioners allegedly purchased was acquired by the Railways, and therefore, it is within the definition of the public premises as defined in Section 2(e) of the Act. As the petitioners are in occupation of the property belonging to the Railways, it is certainly unauthorized occupation as defined under Section 2(g) of the Act, and therefore, the Estate Officer can evict them by following summary proceedings. When the Act contemplates proceedings, an elaborate enquiry is not contemplated, and the Estate Officer appointed under Section 3 of the Act need not resort to adjudication as if it is a suit for title. Their submission that the Estate Officer passed orders without reasons is, therefore, rejected. A perusal of the order passed by the Estate Officer would show that after duly verifying the records, a conclusion was arrived at that the petitioners were in occupation of the Railway property.

The submission that the order of the Estate Officer is erroneous cannot be accepted. It is now well settled that when an order passed by the original authority is subjected to appeal and the same is confirmed, the original order would merge in the appellate order. If the appellate order is challenged in a writ petition, the validity of the appellate order has to be tested and not that of the original order. However, having regard to the nature of the submissions, this Court has also perused the original order and after giving anxious consideration, this Court does not find any substance in the submission of the learned Counsel for the petitioners that the appellate

authority has not correctly recorded the findings. It was urged before the learned District Judge that the land acquired by the Railways from Sri B.Madhusudhan Reddy is different from the land developed by the appellants, that even if the Railways have got any right, they lost the same on account of uninterrupted possession and enjoyment of the property by the appellants who have perfected their title. Adverting to this, the learned District Judge referred to Ex.B-7, which is the report, dated 23.08.2001, as a result of joint inspection/survey, and recorded the finding as under.

> Even if Malkajgiri Municipality has laid any road in between the Colony on one hand built up by the appellants and Railway track on the other side, the said road cannot divide the Railway lane with the colony built up by the appellants. Malkajgiri Municipality did not have any right to lay a road and even if it had laid any road it cannot be the boundary of the land of the Railway. The Joint survey conducted by the Mandal Revenue Officer has shown all these houses and colony of the appellants along with the road laid by the Municipality to be in the land acquired by the Railway and therefore, the appellants are not right in contending that the said road is demarcating the Railway track on one hand and the remaining land of the landholders on the other hand. Therefore, the entire land is belonging to Railway and the appellants are only encroachers and they cannot get any protection from the court and their right is not perfected in the short time passed after purchase of the land by them.

The learned District Judge having considered the documents marked before him, for cogent reasons came to correct conclusion and the finding is unassailable. Indeed, as submitted by the learned Standing Counsel, in these writ petitions the scope of enquiry is very limited. Ultimate fact finding authority, namely the Court of the District Judge, has examined the relevant material and came to the conclusion that the petitioners are encroachers. A re-appreciation of the evidence is not permissible in these petitions for judicial review. Even if another view is plausible on such re-appreciation, the same is beyond scope of judicial review.

The Writ Petitions are devoid of merits and are accordingly dismissed. There shall be no order as to costs.

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(V.V.S.RAO, J)

21.03.2006

vs